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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE,
Plaintiff,

: CIVIL NO: 1:CV-00-0315

:

: (Judge Rambo)

v.

:

: (Magistrate Judge Smyser)

KENNETH K. KYLER,
JOHN A. PALAKOVICH,
WILLIAM J. RHOADES,
MARTIN DRAGNOVICH,
OFFICER RUBENDALL, and
OFFICER RAGER,
Defendants

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FILED
HARRISBURG, PA

AUG 14 2001

ORDER

MARY E. D'ANDREA, CLERK
PER *[Signature]*
DEPUTY CLERK

The plaintiff, a state prisoner proceeding *pro se*, commenced this 42 U.S.C. § 1983 action in the Court of Common Pleas of Cumberland County, Pennsylvania. In a complaint and amended complaint, the plaintiff claims that defendants Kyler, Palakovich, Rhoades and Dragnovich violated his constitutional rights and Pennsylvania Department of Corrections regulations by confiscating his personal law books and religious materials, by denying him showers and outside exercise and by subjecting him to excessive heat and poor ventilation.

On February 22, 2000, defendants Kyler, Palakovich, Rhoades and Dragnovich removed the case to this court. On March 7, 2000, defendants Kyler, Palakovich, Rhoades and Dragnovich filed an answer to the plaintiff's complaint and amended complaint.

On July 17, 2000, the plaintiff filed a supplemental complaint adding defendants Rubendall and Rager. The plaintiff claims that defendants Rubendall and Rager failed to return to him his personal, religious and legal materials despite orders by Drs. Laskey and Clark and defendants Dragnovich and Palakovich that the plaintiff's property be returned to him.

On August 28, 2000, the defendants filed an answer to the plaintiff's supplemental complaint.

There are a number of motions pending in this case:

- 1) defendants' motion for summary judgment (doc. 53);
- 2) plaintiff's motion for an order requiring defendants to permit him to communicate with inmate Norman Johnston (doc.

115); 3) plaintiff's motion for an order requiring SCI-Greene officials to return plaintiff's legal materials and to provide enough paper, carbon paper and envelopes to enable him to meet court deadlines (doc. 119); 4) plaintiff's motion to compel discovery (doc. 126); 5) plaintiff's motion for sanctions against defendants and counsel and to hold affiant Sharon Sebek in contempt (doc. 144); and 6) the plaintiff's motion for an enlargement of time (doc. 145).

We will first address the plaintiff's motion for an order allowing him to communicate with inmate Norman Johnston. The plaintiff wants to communicate with inmate Johnston, who is in a different state correctional institution than the plaintiff, in order to get Johnston to sign a declaration that the plaintiff wants to use in opposing the defendants' motion for summary judgment. The defendants opposed the plaintiff's motion in part on the ground that the plaintiff had not specified what information he was seeking from Johnston. In connection with his reply brief in support of his motion, the plaintiff presented the declaration that he is seeking to send

to Johnston for his signature. By an Order dated July 19, 2001, the defendants were ordered to file a sur-reply brief setting forth their position on allowing the plaintiff to send the proposed declaration to inmate Johnston.

On August 6, 2001, the defendants filed a sur-reply brief. In their brief, the defendants indicate that they have security concerns about allowing the plaintiff and inmate Johnston to communicate, but that they are willing, on a one-time basis, to make arrangements so that the plaintiff's proposed declaration may be delivered and presented to inmate Johnston for his consideration and signature. The defendants state that if the plaintiff delivers the proposed declaration to the Administrative Assistant to the Superintendent at SCI-Greene, he will then forward it to the Administrative Assistant to the Superintendent at SCI-Camp Hill for hand delivery to inmate Johnston, and that the process would then be reversed for the document to be returned to the plaintiff. Since the defendants have agreed to a procedure to have the proposed declaration delivered to Johnston and then returned to the

plaintiff, there is no need for the court to enter an order ordering the defendants to allow the plaintiff to communicate with inmate Johnston. Accordingly, the plaintiff's motion for an order allowing him to communicate with inmate Norman Johnston will be denied.

Next, we will address the plaintiff's motion for an order requiring SCI-Greene officials to return plaintiff's legal materials and to provide enough paper, carbon paper and envelopes to enable him to meet court deadlines. The plaintiff has requested that court issue a writ of mandamus to SCI-Greene officials.

The court has authority to issue writs of mandamus pursuant to the All Writs Act, 28 U.S.C. § 1651(a), which provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The writ of mandamus is a drastic remedy that should be granted only in extraordinary

circumstances. *In re Nwanze*, 242 F.3d 521, 524 (3rd Cir. 2001). "Traditionally, the writ of mandamus has been used 'to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.'" *In re Chambers Development Co., Inc.*, 148 F.3d 214, 223 (3rd Cir. 1998) (quoting *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661 (1978)). "[I]n addition to the jurisdictional prerequisite inherent in the language of § 1651(a), two additional prerequisites for issuance of a writ are: (1) that petitioner have no other adequate means to attain the desired relief, and (2) that petitioner meets its burden of showing that its right to the writ is clear and indisputable." *Id.* (quoting *Hahnemann Univ. Hosp. v. Edgar*, 74 F.3d 456, 462 (3rd Cir. 1996)). It is within the court's discretion to refrain from issuing the writ even when the requirements for mandamus are technically satisfied. *Id.*

A writ of mandamus is not appropriate in this case and is not necessary to aid this court in the exercise of its jurisdiction.

The plaintiff has not identified what property it is that he needs to utilize to prepare his brief in opposition to the defendants' motion for summary judgment. Moreover, although the petitioner asserts that prison officials are not following the policy on property exchanges, it is clear from the plaintiff's briefs and declaration that he had the opportunity to go through his property on May 22, 2001 and June 17, 2001. The plaintiff's assertion that he does not have enough paper, carbon paper and envelopes to litigate this action is belied by the numerous, unnecessarily lengthy documents that he has filed in this case.

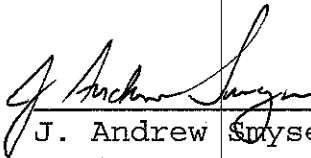
The plaintiff's motion for an order requiring SCI-Greene officials to return plaintiff's legal materials and to provide enough paper, carbon paper and envelopes to enable him to meet court deadlines will be denied.

On August 6, 2001, the plaintiff filed a motion for sanctions against the defendants and defense counsel and to hold affiant Sharon Sebek in contempt. The plaintiff asserts

that certain statements in Sharon Sebek's declaration and in the defendants' brief in opposition to his motion for an order requiring SCI-Greene officials to return plaintiff's legal materials and to provide enough paper, carbon paper and envelopes to enable him to meet court deadlines are false. Although the plaintiff may dispute certain statements made by the defendants, there is no basis to impose sanctions or hold anyone in contempt of court. Accordingly, the plaintiff's motion for sanctions against the defendants and defense counsel and to hold affiant Sharon Sebek in contempt will be denied.

On August 6, 2001, the plaintiff also filed a motion for an enlargement of time to file his response to the defendant's motion for summary judgment. In light of the need for the court to address the plaintiff's motion to compel, which is not yet ripe and which may affect the plaintiff's response to the defendants' motion for summary judgment, we will grant an extension until September 4, 2001 for the plaintiff to respond to the defendants' motion for summary judgment.

AND NOW, this *14th* day of August, 2001, **IT IS HEREBY ORDERED** that the plaintiff's motion (doc. 115) for an order allowing him to communicate with inmate Norman Johnston is **DENIED**, that the plaintiff's motion (doc. 119) for an order requiring SCI-Greene officials to return plaintiff's legal materials and to provide enough paper, carbon paper and envelopes to enable him to meet court deadlines is **DENIED**, and that the plaintiff's motion (doc. 144) for sanctions against the defendants and defense counsel and to hold affiant Sharon Sebek in contempt is **DENIED**. **IT IS FURTHER ORDERED** that the plaintiff's motion (doc. 145) for an enlargement of time to respond to the defendant's motion for summary judgment is **GRANTED**. The plaintiff shall file his response to the defendants' motion for summary judgment on or before September 4, 2001.


J. Andrew Snyder
Magistrate Judge

Dated: August *14*, 2001.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

August 14, 2001

Re: 1:00-cv-00315 Jae v. Kyler

True and correct copies of the attached were mailed by the clerk
to the following:

John Richard Jae
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cc:

Judge	()	() Pro Se Law Clerk
Magistrate Judge	()	() INS
U.S. Marshal	()	() Jury Clerk
Probation	()	
U.S. Attorney	()	
Atty. for Deft.	()	
Defendant	()	
Warden	()	
Bureau of Prisons	()	
Ct Reporter	()	
Ctroom Deputy	()	
Orig-Security	()	
Federal Public Defender	()	
Summons Issued	()	with N/C attached to complt. and served by: U.S. Marshal () Pltff's Attorney ()
Standard Order 93-5	()	
Order to Show Cause	()	with Petition attached & mailed certified mail to: US Atty Gen () PA Atty Gen ()

Bankruptcy Court ()
Other _____ ()

DA of County () Respondents ()

MARY E. D'ANDREA, Clerk

DATE: 8/14/01

BY: STB
Deputy Clerk